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April 18, 2013

VIA E-MAIL ONLY

Jeffrey S. Jordan, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6723
Our File No. 30969.1

Dear Mr. Jordan:

Our firm serves as counsel to Bera for Congress and Rita Copeland in her capacity as Treasurer for Bera for Congress, a respondent in MUR 6723.

In short, the complaint filed by the California Republican Party is meritless and should be dismissed.

The complaint is based on a faulty premise – that Congressman Bera's appearance in the House Majority PAC's web video is a "contribution" to Bera for Congress. The complaint makes this point by asserting that the video is something of value to the Bera campaign and, therefore, is a contribution. In doing so, the complaint completely ignores the Federal Election Commission's regulations and interpretations regarding when a communication that features a candidate is "coordinated" with the candidate and, therefore, must be considered an in-kind contribution to the featured candidate.

The test for whether a particular communication is a coordinated communication is outlined in 11 C.F.R. 109.21. Under this test, a communication would be coordinated with a candidate and considered an in-kind contribution if it meets the payment, content, and conduct prongs outlined in the regulation. The web video clearly does not meet the content prong of the regulation. The following is an analysis of why none of the five content standards are met:

1. **Electioneering Communication:** The web video is not an electioneering communication because it is not being distributed with 60 days before a general election or 30 days before a primary election. (11 C.F.R. section 100.29.)

2. **Public Communication¹ that Republishes Candidate Campaign Materials:** The web video does not disseminate, distribute, or republish any of Congressman Bera's

¹ It is worth pointing out that the Commission's regulations exempt the posting of videos on a website from the definition of "public communication" unless the video is placed on another person's website for a fee. Assuming that House Majority PAC has not paid to have the web (footnote continued)

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campaign materials. In order to meet the republication standard, the web video would have to actually contain pre-existing Bera for Congress footage or materials and it clearly does not. (Factual and Legal Analysis, MUR 6502 (Nelson) July 17, 2012 [finding that use of pre-existing campaign material is needed to meet republication standard and appearance in ads does not constitute republication of campaign materials].)

3. **Public Communication containing Express Advocacy:** Under the Commission's regulations, the web video would have to contain phrases such as "Re-elect your Congressman," "vote against Old Hickory," or "Bill McKay in '94," in order to be considered express advocacy. (11 C.F.R. section 100.22.) The web video does not contain any such words or phrases and, therefore, does not constitute "express advocacy."

4. **Public Communication within 90 Days of an Election:** The web video is not being distributed within 90 days of an election in which Congressman Bera is participating. (11 C.F.R. section 100.29(c)(4).)

5. **Public Communication containing Functional Equivalent of Express Advocacy:** In order to be considered the "functional equivalent of express advocacy," a communication has to be susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. The web video is clearly susceptible of another reasonable interpretation — i.e., the ad is focused on trumpeting the efficacy of House Majority PAC.

Because the web video does not meet the content prong, it is not a "coordinated communication" and any payments in connection with the video would not be considered an in-kind contribution to Bera for Congress. For this reason, Bera for Congress urges the Commission to dismiss the complaint and close this matter.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,



Kevin R. Heneghan

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video placed on another's web site, it would not be a "public communication" and, therefore, would definitively not meet the content standards without regard to the content of the video.